

to take whatever action may be necessary to protect the health of a totally disabled miner.

(d) Any interested medical provider may, if appropriate, be made a party to a dispute over medical benefits.

§ 725.710 Objective of vocational rehabilitation.

The objective of vocational rehabilitation is the return of a miner who is totally disabled for work in or around a coal mine and who is unable to utilize those skills which were employed in the miner's coal mine employment to gainful employment commensurate with such miner's physical impairment. This objective may be achieved through a program of re-evaluation and redirection of the miner's abilities, or retraining in another occupation, and selective job placement assistance.

§ 725.711 Requests for referral to vocational rehabilitation assistance.

Each miner who has been determined entitled to receive benefits under part C of title IV of the Act shall be informed by the OWCP of the availability and advisability of vocational rehabilitation services. If such miner chooses to avail himself or herself of vocational rehabilitation, his or her request shall be processed and referred by OWCP vocational rehabilitation advisors pursuant to the provisions of §§ 702.501–702.508 of this chapter as is appropriate.

PART 726—BLACK LUNG BENEFITS; REQUIREMENTS FOR COAL MINE OPERATOR'S INSURANCE

Subpart A—General

Sec.

- 726.1 Statutory insurance requirements for coal mine operators.
- 726.2 Purpose and scope of this part.
- 726.3 Relationship of this part to other parts in this subchapter.
- 726.4 Who must obtain insurance coverage.
- 726.5 Effective date of insurance coverage.
- 726.6 The Office of Workmen's Compensation programs.
- 726.7 Forms, submission of information.

Subpart B—Authorization of Self-Insurers

- 726.101 Who may be authorized to self-insure.

- 726.102 Application for authority to become a self-insurer; how filed; information to be submitted.
- 726.103 Application for authority to self-insure; effect of regulations contained in this part.
- 726.104 Action by the Office upon application of operator.
- 726.105 Fixing the amount of security.
- 726.106 Type of security.
- 726.107 Deposits of negotiable securities with Federal Reserve banks or the Treasurer of the United States; authority to sell such securities; interest thereon.
- 726.108 Withdrawal of negotiable securities.
- 726.109 Increase or reduction in the amount of indemnity bond or negotiable securities.
- 726.110 Filing of agreement and undertaking.
- 726.111 Notice of authorization to self-insure.
- 726.112 Reports required of self-insurer; examination of accounts of self-insurer.
- 726.113 Disclosure of confidential information.
- 726.114 Period of authorization as self-insurer; reauthorization.
- 726.115 Revocation of authorization to self-insure.

Subpart C—Insurance Contracts

- 726.201 Insurance contracts—generally.
- 726.202 Who may underwrite an operator's liability.
- 726.203 Federal Coal Mine Health and Safety Act endorsement.
- 726.204 Statutory policy provisions.
- 726.205 Other forms of endorsement and policies.
- 726.206 Terms of policies.
- 726.207 Discharge by the carrier of obligations and duties of operator.

REPORTS BY CARRIER

- 726.208 Report by carrier of issuance of policy or endorsement.
- 726.209 Report; by whom sent.
- 726.210 Agreement to be bound by report.
- 726.211 Name of one employer only shall be given in each report.
- 726.212 Notice of cancellation.
- 726.213 Reports by carriers concerning the payment of benefits.

AUTHORITY: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 934, 936, 945; 33 U.S.C. 901 et seq., Secretary's Order 7-87, 52 FR 48466, Employment Standards Order No. 90-02.

SOURCE: 38 FR 12494, May 11, 1973, unless otherwise noted.

Editorial Note: Nomenclature changes to part 726 appear at 55 FR 28607, July 12, 1990.

Subpart A—General

§ 726.1 Statutory insurance requirements for coal mine operators.

Section 423 of title IV of the Federal Coal Mine Health and Safety Act as amended (hereinafter the Act) requires each coal mine operator who is operating or has operated a coal mine in a State which is not included in the list published by the Secretary (see part 722 of this chapter) to secure the payment of benefits for which he may be found liable under section 422 of the Act and the provisions of this subchapter by either (a) qualifying as a self-insurer, or (b) by subscribing to and maintaining in force a commercial insurance contract (including a policy or contract procured from a State agency).

§ 726.2 Purpose and scope of this part.

(a) This part provides rules directing and controlling the circumstances under which a coal mine operator shall fulfill his insurance obligations under the Act.

(b) This subpart A sets forth the scope and purpose of this part and generally describes the statutory framework within which this part is operative.

(c) Subpart B of this part sets forth the criteria a coal mine operator must meet in order to qualify as a self-insurer.

(d) Subpart C of this part sets forth the rules and regulations of the Secretary governing contracts of insurance entered into by coal operators and commercial insurance sources for the payment of black lung benefits under part C of the Act.

§ 726.3 Relationship of this part to other parts in this subchapter.

(a) This part 726 implements and effectuates responsibilities for the payment of black lung benefits placed upon coal operators by sections 415 and 422 of the Act and the regulations of the Secretary in this subchapter, particularly those set forth in part 725 of this subchapter. All definitions, usages, procedures, and other rules affecting the responsibilities of coal operators prescribed in parts 715, 720, and 725 of this subchapter are hereby made applicable, as appropriate, to this part 726.

(b) In the event that an apparent conflict arises between the interpretation of any provision in this part 726 and the interpretation of some provision appearing in a different incorporated part of this chapter, the conflicting provisions shall be read harmoniously to the fullest extent possible. In the event that a harmonious interpretation of the provisions is impossible, the provision or provisions of this part shall govern insofar as the question is one which arises out of a dispute over the responsibilities and obligations of coal mine operators to secure the payment of black lung benefits as prescribed by the Act. No provision of this part shall be operative as to matters falling outside the purview of this part.

§ 726.4 Who must obtain insurance coverage.

(a) Section 423 of part C of title IV of the Act requires each operator of a coal mine or former operator in any State which does meet the requirements prescribed by the Secretary pursuant to section 411 of part C of title IV of the Act to self-insure or obtain a policy or contract of insurance to guarantee the payment of benefits for which such operator may be adjudicated liable under section 422 of the Act. In enacting sections 422 and 423 of the Act Congress has unambiguously expressed its intent that coal mine operators bear the cost of providing the benefits established by part C of title IV of the Act. Section 3 of the Act defines an “operator” as any owner, lessee, or other person who operates, controls, or supervises a coal mine.

(b) Section 422(i) of the Act clearly recognizes that any individual or business entity who is or was a coal mine operator may be found liable for the payment of pneumoconiosis benefits after December 31, 1973. Within this framework it is clear that the Secretary has wide latitude for determining which operator shall be liable for the payment of part C benefits. Comprehensive standards have been promulgated in subpart D or part 725 of this chapter for the purpose of guiding the Secretary in making such determination. It must be noted that pursuant to these standards any parent or subsidiary corporation, any individual

or corporate partner, or partnership, any lessee or lessor of a coal mine, any joint venture or participant in a joint venture, any transferee or transferor of a corporation or other business entity, any former, current, or future operator or any other form of business entity which has had or will have a substantial and reasonably direct interest in the operation of a coal mine may be determined liable for the payment of pneumoconiosis benefits after December 31, 1973. The failure of any such business entity to self-insure or obtain a policy or contract of insurance shall in no way relieve such business entity of its obligation to pay pneumoconiosis benefits in respect of any case in which such business entity's responsibility for such payments has been properly adjudicated. Any business entity described in this section shall take appropriate steps to insure that any liability imposed by part C of the Act on such business entity shall be dischargeable.

§ 726.5 Effective date of insurance coverage.

Pursuant to section 422(c) of part C of title IV of the Act, no coal mine operator shall be responsible for the payment of any benefits whatsoever for any period prior to January 1, 1974. However, coal mine operators shall be liable as of January 1, 1974, for the payment of benefits in respect of claims which were filed under section 415 of part B of title IV of the Act after July 1, 1973. Section 415(a)(3) requires the Secretary to notify any operator who may be liable for the payment of benefits under part C of title IV beginning on January 1, 1974, of the pendency of a section 415 claim. Section 415(a)(5) declares that any operator who has been notified of the pendency of a section 415 claim shall be bound by the determination of the Secretary as to such operator's liability and as to the claimant's entitlement to benefits as if the claim were filed under part C of title IV of the Act and section 422 thereof had been applicable to such operator. Therefore, even though no benefit payments shall be required of an operator prior to January 1, 1974, the liability for these payments may be finally adjudicated at any time after July 1, 1973. Neither the failure of an operator to

exercise his right to participate in the adjudication of such a claim nor the failure of an operator to obtain insurance coverage in respect of claims filed after June 30, 1973, but before January 1, 1974, shall excuse such operator from his liability for the payment of benefits to such claimants under part C of title IV of the Act.

§ 726.6 The Office of Workmen's Compensation Programs.

The Office of Workmen's Compensation Programs (hereinafter the Office or OWCP) is that subdivision of the Employment Standards Administration of the U.S. Department of Labor which has been empowered by the Secretary of Labor to carry out his functions under section 415 and part C of title IV of the Act. As noted throughout this part 726 the Office shall perform a number of functions with respect to the regulation of both the self-insurance and commercial insurance programs. All correspondence with or submissions to the Office should be addressed as follows:

Division of Coal Mine Workers' Compensation,
Office of Workmen's Compensation
Programs, Employment Standards Admin-
istration, U.S. Department of Labor, Wash-
ington, D.C. 20210

§ 726.7 Forms, submission of information.

Any information required by this part 726 to be submitted to the Office of Workmen's Compensation Programs or any other office or official of the Department of Labor, shall be submitted on such forms or in such manner as the Secretary deems appropriate and has authorized from time to time for such purposes.

Subpart B—Authorization of Self-Insurers

§ 726.101 Who may be authorized to self-insure.

(a) Pursuant to section 423 of part C of title IV of the Act, authorization to self-insure against liability incurred by coal mine operators on account of the total disability or death of miners due to pneumoconiosis may be granted or denied in the discretion of the Secretary. The provisions of this subpart

describe the minimum requirements established by the Secretary for determining whether any particular coal mine operator shall be authorized as a self-insurer. Any operator who meets the standards and qualifications contained in this subpart prescribed for self-insurers shall be required to deposit security in the form of either an indemnity bond or negotiable securities (at the option of the Office) of a kind and in an amount determined by the Office.

(b) The minimum requirements which must be met by any operator seeking authorization to self-insure are as follows:

(1) Such operator must, at the time of application, have been in the business of mining coal for at least the 3 consecutive years prior to such application; and,

(2) Such operator must demonstrate the administrative capacity to fully service such claims as may be filed against him; and,

(3) Such operator's average current assets over the preceding 3 years (in computing average current assets such operator shall not include the amount of any negotiable securities which he may be required to deposit to secure his obligations under the Act) must exceed current liabilities by the sum of—

(i) The estimated aggregate amount of black lung benefits (including medical benefits) which such operator may expect to be required to pay during the ensuing year; and,

(ii) The annual premium cost for any indemnity bond purchased; and

(4) Such operator must obtain an indemnity bond the face amount of which, or deposit negotiable securities the current value of which, shall be determined as follows:

(i) An operator with between 5 and 19 employee-miners shall be required to post security in an amount equal to \$3,000 times the average number of employee-miners plus \$75,000.

(ii) An operator with between 20 and 100 employee-miners shall be required to post security in the amount of \$135,000;

(iii) Thereafter, there shall be an increase in the amount of security which shall be required to be posted of approximately \$75,000 per 100 employee-

miners in excess of the first 100 employee-miners;

(iv) The amounts of security required in this paragraph are the minimum security requirements the Office shall prescribe in respect of any application for authorization to self-insure. Any factors bearing on a particular application which the Office deems pertinent shall be considered in fixing the amount of security which shall be required, and may result in higher security requirements than those enumerated in this paragraph.

(v) For purposes of this paragraph the number of employee-miners shall be established by determining the maximum quarterly average number of full-time employee-miners employed by the applicant during the preceding 4 calendar quarters; and

(5) No operator with fewer than 5 full-time employee-miners shall be permitted to self-insure.

(c) No operator who is unable to meet the requirements of this section should apply for authorization to self-insure and no application for self-insurance shall be approved by the Office until such time as the amount prescribed by the Office has been secured either by indemnity bond or the deposit of negotiable securities as prescribed in this subpart.

§ 726.102 Application for authority to become a self-insurer; how filed; information to be submitted.

(a) *How filed.* Application for authority to become a self-insurer shall be addressed to the Office and be made on a form provided by the Office. Such application shall be signed by the applicant over his typewritten name and if the applicant is not an individual, by the principal officer of the applicant duly authorized to make such application over his typewritten name and official designation and shall be sworn to by him. If the applicant is a corporation, the corporate seal shall be affixed. The application shall be filed with the Office in Washington, DC.

(b) *Information to be submitted.* Each application for authority to self-insure shall contain:

(1) A statement of the employer's payroll report for each of the preceding 3 years;

(2) A statement of the average number of employees engaged in employment within the purview of the Act for each of the preceding 3 years;

(3) A list of the mine or mines to be covered by any particular self-insurance agreement. Each such mine or mines listed shall be described by name and reference shall be made to the Federal Identification Number assigned such mine by the Bureau of Mines, U.S. Department of the Interior;

(4) A certified itemized statement of the gross and net assets and liabilities of the operator for each of the 3 preceding years in such manner as prescribed by the Office;

(5) A statement demonstrating the applicant's administrative capacity to provide or procure adequate servicing for a claim including both medical and dollar claims; and

(6) In addition to the aforementioned, the Office may in its discretion, require the applicant to submit such further information or such evidence as the Office may deem necessary to have in order to enable it to give adequate consideration to such application.

(c) *Who may file.* An application for authorization to self-insure may be filed by any parent or subsidiary corporation, partner or partnership, party to a joint venture or joint venture, individual, or other business entity which may be determined liable for the payment of black lung benefits under part C of title IV of the Act, regardless of whether such applicant is directly engaged in the business of mining coal. However, in each case for which authorization to self-insure is granted, the agreement and undertaking filed pursuant to § 726.110 and the security deposit shall be respectively filed by and deposited in the name of the applicant only.

§ 726.103 Application for authority to self-insure; effect of regulations contained in this part.

As appropriate, each of the regulations, interpretations and requirements contained in this part 726 including those described in subpart C of this part shall be binding upon each applicant hereunder and the applicant's consent to be bound by all requirements of the said regulations shall be deemed to

be included in and a part of the application, as fully as though written therein.

§ 726.104 Action by the Office upon application of operator.

(a) Upon receipt of a completed application for authorization to self-insure, the Office shall, after examination of the information contained in the application deny the applicant's request for authorization to self-insure or, determine the amount of security which must be given by the applicant to guarantee the payment of benefits and the discharge of all other obligations which may be required of such applicant under the Act.

(b) The applicant shall thereafter be notified that he may give security in the amount fixed by the Office (see § 726.105):

(1) In the form of an indemnity bond with sureties satisfactory to the Office; or,

(2) By a deposit of negotiable securities with a Federal Reserve Bank as provided by the regulations in this part.

(c) Any applicant who cannot meet the security deposit requirements imposed by the Office should proceed to obtain a commercial policy or contract of insurance. Any applicant for authorization to self-insure whose application has been rejected or who believes that the security deposit requirements imposed by the Office are excessive may, in writing, request that the Office review its determination. A request for review should contain such information as may be necessary to support the request that the amount of security required be reduced.

(d) Upon receipt of any such request the Office shall review its previous determination in light of any new or additional information submitted and inform the applicant whether or not a reduction in the amount of security initially required is warranted.

§ 726.105 Fixing the amount of security.

The amount of security to be fixed and required by the Office shall be such

as the Office shall deem to be necessary and sufficient to secure the performance by the applicant of all obligations imposed upon him as an operator by the Act. The formula described in § 726.101 for determining the amount of security which shall be required is prescribed for the initial year of the black lung benefits program only. In addition, the formula is not the exclusive criterion to be used by the Office in determining whether or not to authorize an applicant to self-insure. Other factors such as the Office may deem relevant to any particular case shall be considered. The amount of security which shall be required as computed pursuant to paragraph (b)(3) of § 726.101 may be increased or decreased in ensuing years when experience or changed conditions so warrant.

§ 726.106 Type of security.

(a) The Office shall determine the type or types of security which an applicant shall or may procure. (See § 726.104(b).)

(b) In the event the indemnity bond option is selected such indemnity bond shall be in such form and contain such provisions as the Office may prescribe: *Provided*, That only corporations may act as sureties on such indemnity bonds. In each case in which the surety on any such bond is a surety company, such company must be one approved by the U.S. Treasury Department under the laws of the United States and the applicable rules and regulations governing bonding companies (see Department of Treasury's Circular-570).

(c) An applicant for authorization to self-insure authorized to deposit negotiable securities to secure his obligations under the Act in the amount fixed by the Office shall deposit any negotiable securities acceptable as security for the deposit of public moneys of the United States under regulations issued by the Secretary of the Treasury. (See 31 CFR 203.7 and 203.8.) The approval, valuation, acceptance, and custody of such securities is hereby committed to the several Federal Reserve Banks and the Treasurer of the United States.

§ 726.107 Deposits of negotiable securities with Federal Reserve banks or the Treasurer of the United States; authority to sell such securities; interest thereon.

Deposits of securities provided for by the regulations in this part shall be made with any Federal Reserve bank or any branch of a Federal Reserve bank designated by the Office, or the Treasurer of the United States, and shall be held subject to the order of the Office with power in the Office, in its discretion in the event of default by the said self-insurer, to collect the interest as it may become due, to sell the securities or any of them as may be required to discharge the obligations of the self-insurer under the Act and to apply the proceeds to the payment of any benefits or medical expenses for which the self-insurer may be liable. The Office may, however, whenever it deems it unnecessary to resort to such securities for the payment of benefits, authorize the self-insurer to collect interest on the securities deposited by him.

§ 726.108 Withdrawal of negotiable securities.

No withdrawal of negotiable securities deposited by a self-insurer, shall be made except upon authorization by the Office. A self-insurer discontinuing business, or discontinuing operations within the purview of the Act, or providing security for the payment of benefits by commercial insurance under the provisions of the Act may apply to the Office for the withdrawal of securities deposited under the regulations in this part. With such application shall be filed a sworn statement setting forth:

(a) A list of all outstanding cases in which benefits are being paid, with the names of the miners and other beneficiaries, giving a statement of the amounts of benefits paid and the periods for which such benefits have been paid; and (b) a similar list of all pending cases in which no benefits have as yet been paid. In such cases withdrawals may be authorized by the Office of such securities as in the opinion of the Office may not be necessary to provide adequate security for the payment of

outstanding and potential liabilities of such self-insurer under the Act.

§ 726.109 Increase or reduction in the amount of indemnity bond or negotiable securities.

Whenever in the opinion of the Office the principal sum of the indemnity bond filed or the amount of negotiable securities deposited, by a self-insurer is insufficient to afford adequate security for the payment of benefits and medical expenses under the Act, the self-insurer shall, upon demand by the Office, file such additional indemnity bond or deposit such additional amount of negotiable securities as the Office may require. At any time upon application of a self-insurer, or on the initiative of the Office, when in its opinion the facts warrant, the principal sum of an indemnity bond required to be given or the amount of negotiable securities required to be deposited may be reduced. A self-insurer seeking such reduction shall furnish such information as the Office may request relative to his current affairs, the nature and hazard of the work of his employees, the amount of the payroll of his employees engaged in coal mine employment within the purview of the Act, his financial condition, and such other evidence as may be deemed material, including a record of payment of benefits made by him.

§ 726.110 Filing of agreement and undertaking.

(a) In addition to the requirement that adequate security be procured as set forth in this subpart, the applicant for the authorization to self-insure shall as a condition precedent to receiving authorization to act as a self-insurer, execute and file with the Office an agreement and undertaking in a form prescribed and provided by the Office in which the applicant shall agree:

(1) To pay when due, as required by the provisions of said Act, all benefits payable on account of total disability or death of any of its employee-miners within the purview of the Act; (2) in such cases to furnish medical, surgical, hospital, and other attendance, treatment, and care as required by the provisions of the Act; (3) to deposit with the Office an indemnity bond in the amount which the Office shall fix, or to

deposit negotiable securities as provided for by the regulations in this part in the amount which the Office shall fix, accordingly as elected in the application; (4) to authorize the Office to sell such negotiable securities so deposited or any part thereof and from the proceeds thereof to pay such benefits, medical, and other expenses and any accrued penalties imposed by law as it may find to be due and payable.

(b) At such time when an applicant has deposited the requisite amount of negotiable securities or obtained an indemnity bond pursuant to § 726.106, such applicant shall send a completed agreement and undertaking together with satisfactory proof that his obligations and liabilities under the Act have been secured to the Office in Washington, D.C.

§ 726.111 Notice of authorization to self-insure.

Upon receipt of a completed agreement and undertaking and satisfactory proof that negotiable securities have been deposited or that an adequate indemnity bond has been procured an applicant for authorization to self-insure shall be notified by the Office in writing, that he is authorized to self-insure to meet the obligations imposed upon such applicant by section 415 and part C of title IV of the Act.

§ 726.112 Reports required of self-insurer; examination of accounts of self-insurer.

(a) Each operator who has been authorized to self-insure under this part shall submit to the Office reports containing such information as the Office may from time to time require or prescribe.

(b) Whenever it deems it to be necessary, the Office may inspect or examine the books of account, records, and other papers of a self-insurer for the purpose of verifying any financial statement submitted to the Office by the self-insurer or verifying any information furnished to the Office in any report required by this section, or any other section of the regulations in this part, and such self-insurer shall permit the Office or its duly authorized representative to make such an inspection

§ 726.113

or examination as the Office shall require. In lieu of this requirement the Office may in its discretion accept an adequate report of a certified public accountant.

(c) Failure to submit or make available any report or information requested by the Office from an authorized self-insurer pursuant to this section may, in appropriate circumstances result in a revocation of the authorization to self-insure.

§ 726.113 Disclosure of confidential information.

Any financial information or records, or other information relating to the business of an authorized self-insurer or applicant for the authorization of self-insurance obtained by the Office shall be exempt from public disclosure to the extent provided in 5 U.S.C. 552(b) and the applicable regulations of the Department of Labor promulgated thereunder. (See 29 CFR part 70.)

§ 726.114 Period of authorization as self-insurer; reauthorization.

(a) No initial authorization as a self-insurer shall be granted for a period in excess of 18 months. A self-insurer who has made an adequate deposit of negotiable securities as required by the Office under the regulations in this part will be reauthorized for the ensuing fiscal year without additional security if the Office finds that his experience as a self-insurer warrants such action. If it is determined that such self-insurer's experience indicates a need for the deposit of additional security, no reauthorization shall be issued for the ensuing fiscal year until such time as the Office receives satisfactory proof that the requisite amount of additional securities have been deposited. A self-insurer who currently has on file an indemnity bond, will receive from the Office each year a bond form for execution in contemplation of reauthorization, and the submission of such bond duly executed in the amount indicated by the Office will be deemed and treated as such self-insurer's application for reauthorization for the ensuing Federal fiscal year.

(b) In each case for which there is an approved change in the amount of negotiable securities required or the face

20 CFR Ch. VI (4-1-97 Edition)

amount of an indemnity bond obtained, a new agreement and undertaking shall be executed.

§ 726.115 Revocation of authorization to self-insure.

The Office may for good cause shown suspend or revoke the authorization of any self-insurer. Failure by a self-insurer to comply with any provision or requirement of law or of the regulations in this part, or with any lawful order or communication of the Office, or the failure or insolvency of the surety on his indemnity bond, or impairment of financial responsibility of such self-insurer, may be deemed good cause for such suspension or revocation.

Subpart C—Insurance Contracts

§ 726.201 Insurance contracts—generally.

Each operator of a coal mine who has not obtained authorization as a self-insurer shall purchase a policy or enter into a contract with a commercial insurance carrier or State agency. Pursuant to authority contained in sections 422(a) and 423 (b) and (c) of part C of title IV of the Act, this subpart describes a number of provisions which are required to be incorporated in a policy or contract of insurance obtained by a coal mine operator for the purpose of meeting the responsibility imposed upon such operator by the Act in respect of the total disability or death of miners due to pneumoconiosis.

§ 726.202 Who may underwrite an operator's liability.

Each coal mine operator who is not authorized to self-insure shall insure and keep insured the payment of benefits as required by the Act with any stock company or mutual company or association, or with any other person, or fund, including any State fund while such company, association, person, or fund is authorized under the law of any State to insure workmen's compensation.

§ 726.203 Federal Coal Mine Health and Safety Act endorsement.

(a) The following form of endorsement shall be attached and applicable

to the standard workmen's compensation and employer's liability policy prepared by the National Council on Compensation Insurance affording coverage under the Federal Coal Mine Health and Safety Act of 1969, as amended:

It is agreed that: (1) With respect to operations in a State designated in item 3 of the declarations, the unqualified term "workmen's compensation law" includes part C of title IV of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. section 931-936, and any laws amendatory thereto, or supplementary thereto, which may be or become effective while this policy is in force, and definition (a) of Insuring Agreement III is amended accordingly; (2) with respect to such insurance as is afforded by this endorsement, (a) the States, if any, named below, shall be deemed to be designated in item 3 of the declaration; (b) Insuring Agreement IV(2) is amended to read "by disease caused or aggravated by exposure of which the last day of the last exposure, in the employment of the insured, to conditions causing the disease occurs during the policy period, or occurred prior to (effective date) and claim based on such disease is first filed against the insured during the policy period."

(b) The term "effective date" as used in paragraph (a) of this section shall be construed to mean the effective date of the first policy or contract of insurance procured by an operator for purposes of meeting the obligations imposed on such operator by section 423 of part C of title IV of the Act.

(c) The Act contains a number of provisions and imposes a number of requirements on operators which differ in varying degrees from traditional workmen's compensation concepts. To avoid unnecessary administrative delays and expense which might be occasioned by the drafting of an entirely new standard workmen's compensation policy specially tailored to the Act, the Office has determined that the existing standard workmen's compensation policy subject to the endorsement provisions contained in paragraph (a) of this section shall be acceptable for purposes of writing commercial insurance coverage under the Act. However, to avoid undue disputes over the meaning of certain policy provisions and in accordance with the authority contained in section 423(b)(3) of the Act, the Office has determined that the following requirements shall be applicable to all com-

mercial insurance policies obtained by an operator for the purpose of insuring any liability incurred pursuant to the Act:

(1) *Operator liability.* (i) Section 415 and part C of title IV of the Act provide coverage for total disability or death due to pneumoconiosis to all claimants who meet the eligibility requirements imposed by the Act. Section 422 of the Act and the regulations duly promulgated thereunder (part 725 of this chapter) set forth the conditions under which a coal mine operator may be adjudicated liable for the payment of benefits to an eligible claimant for any period subsequent to December 31, 1973.

(ii) Section 422(c) of the Act prescribes that except as provided in 422(i) (see paragraph (c)(2) of this section) an operator may be adjudicated liable for the payment of benefits in any case if the total disability or death due to pneumoconiosis upon which the claim is predicated arose at least in part out of employment in a mine in any period during which it was operated by such operator. The Act does not require that such employment which contributed to or caused the total disability or death due to pneumoconiosis occur subsequent to any particular date in time. The Secretary in establishing a formula for determining the operator liable for the payment of benefits (see subpart D of part 725 of this chapter) in respect of any particular claim, must therefore, within the framework and intent of title IV of the Act find in appropriate cases that an operator is liable for the payment of benefits for some period after December 31, 1973, even though the employment upon which an operator's liability is based occurred prior to July 1, 1973, or prior to the effective date of the Act or the effective date of any amendments thereto, or prior to the effective date of any policy or contract of insurance obtained by such operator. Paragraph (a) of this section shall be construed to incorporate these requirements in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act.

(2) *Successor liability.* Section 422(i) of part C of title IV of the Act requires

that a coal mine operator who after December 30, 1969, acquired his mine or substantially all of the assets thereof from a person who was an operator of such mine on or after December 30, 1969, shall be liable for and shall secure the payment of benefits which would have been payable by the prior operator with respect to miners previously employed in such mine if the acquisition had not occurred and the prior operator had continued to operate such mine. In the case of an operator who is determined liable for the payment of benefits under section 422(i) of the Act and part 725 of this subchapter, such liability shall accrue to such operator regardless of the fact that the miner on whose total disability or death the claim is predicated was never employed by such operator in any capacity. Paragraph (a) of this section shall be construed to incorporate this requirement in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act.

(3) *Medical eligibility.* Pursuant to section 422(h) of part C of title IV of the Act and the regulations described therein (see subpart D of part 410 of this title) benefits shall be paid to eligible claimants on account of total disability or death due to pneumoconiosis and in cases where the miner on whose death a claim is predicated was totally disabled by pneumoconiosis at the time of his death regardless of the cause of such death. Paragraph (a) of this section shall be construed to incorporate these requirements in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act.

(4) *Payment of benefits, rates.* Section 422(c) of the Act by incorporating section 412(a) of the Act requires the payment of benefits at a rate equal to 50 per centum of the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled is entitled at the time of payment under chapter 81 of title 5, United States Code. These benefits are augmented on account of eligible dependents as appropriate (see section 412(a) of part B of title IV of the Act). Since the dollar amount of benefits payable

to any beneficiary is required to be computed at the time of payment such amounts may be expected to increase from time to time as changes in the GS-2 grade are enacted into law. Paragraph (a) of this section shall be construed to incorporate in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act, the requirement that the payment of benefits to eligible beneficiaries shall be made in such dollar amounts as are prescribed by section 412(a) of the Act computed at the time of payment.

(5) *Compromise and waiver of benefits.* Section 422(a) of part C of title IV of the Act by incorporating sections 15(b) and 16 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 915(b) and 916) prohibits the compromise and/or waiver of claims for benefits filed or benefits payable under section 415 and part C of title IV of the Act. Paragraph (a) of this section shall be construed to incorporate these prohibitions in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act.

(6) *Additional requirements.* In addition to the highlighted requirements described in paragraph (c)(1) through (5) of this section, paragraph (a) of this section shall, to the fullest extent possible, be construed to bring any policy or contract of insurance entered into by an operator for the purpose of insuring such operator's liability under part C of title IV of the Act into conformity with the legal requirements placed upon such operator by section 415 and part C of title IV of the Act and parts 720 and 725 of this subchapter.

(d) Nothing in this section shall relieve any operator or carrier of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this section.

§ 726.204 Statutory policy provisions.

Pursuant to section 423(b) of part C of title IV of the Act each policy or contract of insurance obtained to comply with the requirements of section 423(a) of the Act must contain or shall be construed to contain—

(a) A provision to pay benefits required under section 422 of the Act, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments; and,

(b) A provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments.

§ 726.205 Other forms of endorsement and policies.

Forms of endorsement or policies other than that described in § 726.203 may be entered into by operators to insure their liability under the Act. However, any form of endorsement or policy which materially alters or attempts to materially alter an operator's liability for the payment of any benefits under the Act shall be deemed insufficient to discharge such operator's duties and responsibilities as prescribed in part C of title IV of the Act. In any event, the failure of an operator to obtain an adequate policy or contract of insurance shall not affect such operator's liability for the payment of any benefits for which he is determined liable.

§ 726.206 Terms of policies.

A policy or contract of insurance shall be issued for the term of 1 year from the date that it becomes effective, but if such insurance be not needed except for a particular contract or operation, the term of the policy may be limited to the period of such contract or operation.

§ 726.207 Discharge by the carrier of obligations and duties of operator.

Every obligation and duty in respect of payment of benefits, the providing of medical and other treatment and care, the payment or furnishing of any other benefit required by the Act and in respect of the carrying out of the administrative procedure required or imposed by the Act or the regulations in this part or 20 CFR part 725 upon an operator shall be discharged and carried out by the carrier as appropriate. Notice to or knowledge of an operator of the occurrence of total disability or death

due to pneumoconiosis shall be notice to or knowledge of such carrier. Jurisdiction of the operator by a district director, administrative law judge, the Office, or appropriate appellate authority under the Act shall be jurisdiction of such carrier. Any requirement under any benefits order, finding, or decision shall be binding upon such carrier in the same manner and to the same extent as upon the operator.

REPORTS BY CARRIER

§ 726.208 Report by carrier of issuance of policy or endorsement.

Each carrier shall report to the Office each policy and endorsement issued, cancelled, or renewed by it to an operator. The report shall be made in such manner and on such form as the Office may require.

(Approved by the Office of Management and Budget under control number 1215-0059)

(Pub. L. No. 96-511)

[38 FR 12494, May 11, 1973, as amended at 49 FR 18294, Apr. 30, 1984]

§ 726.209 Report; by whom sent.

The report of issuance, cancellation, or renewal of a policy and endorsement provided for in § 726.208 shall be sent by the home office of the carrier, except that any carrier may authorize its agency or agencies to make such reports to the Office.

(Approved by the Office of Management and Budget under control number 1215-0059)

(Pub. L. No. 96-511)

[38 FR 12494, May 11, 1973, as amended at 49 FR 18294, Apr. 30, 1984]

§ 726.210 Agreement to be bound by report.

Every carrier seeking to write insurance under the provisions of this Act shall be deemed to have agreed that the acceptance by the Office of a report of the issuance or renewal of a policy of insurance, as provided for by § 726.208 shall bind the carrier to full liability for the obligations under this Act of the operator named in said report. It shall be no defense to this agreement that the carrier failed or delayed to

§ 726.211

issue, cancel, or renew the policy to the operator covered by this report.

(Approved by the Office of Management and Budget under control number 1215-0059)

(Pub. L. No. 96-511)

[38 FR 12494, May 11, 1973, as amended at 49 FR 18294, Apr. 30, 1984]

§ 726.211 Name of one employer only shall be given in each report.

A separate report of the issuance or renewal of a policy and endorsement, provided for by § 726.208, shall be made for each operator covered by a policy. If a policy is issued or renewed insuring more than one operator, a separate report for each operator so covered shall be sent to the Office with the name of only one operator on each such report.

(Approved by the Office of Management and Budget under control number 1215-0059)

(Pub. L. No. 96-511)

[38 FR 12494, May 11, 1973, as amended at 49 FR 18294, Apr. 30, 1984]

§ 726.212 Notice of cancellation.

Cancellation of a contract or policy of insurance issued under authority of the Act shall not become effective otherwise than as provided by 33 U.S.C. 936(b); and notice of a proposed cancellation shall be given to the Office and to the operator in accordance with the provisions of 33 U.S.C. 912(c), 30 days before such cancellation is intended to be effective (see sec. 422(a) of part C of title IV of the Act).

(Approved by the Office of Management and Budget under control number 1215-0059)

(Pub. L. No. 96-511)

[38 FR 12494, May 11, 1973, as amended at 49 FR 18294, Apr. 30, 1984]

§ 726.213 Reports by carriers concerning the payment of benefits.

Pursuant to 33 U.S.C. 914(c) as incorporated by section 422(a) of part C of title IV of the Act and § 726.207 each carrier issuing a policy or contract of insurance under the Act shall upon making the first payment of benefits and upon the suspension of any payment in any case, immediately notify the Office in accordance with a form prescribed by the Office that payment of benefit has begun or has been suspended as the case may be. In addition, each such carrier shall at the request

20 CFR Ch. VI (4-1-97 Edition)

of the Office submit to the Office such additional information concerning policies or contracts of insurance issued to guarantee the payment of benefits under the Act and any benefits paid thereunder, as the Office may from time to time require to carry out its responsibilities under the Act.

(Approved by the Office of Management and Budget under control number 1215-0059)

(Pub. L. No. 96-511)

[38 FR 12494, May 11, 1973, as amended at 49 FR 18294, Apr. 30, 1984]

PART 727—REVIEW OF PENDING AND DENIED CLAIMS UNDER THE BLACK LUNG BENEFITS REFORM ACT OF 1977

Subpart A—General

Sec.

727.1 Statutory provisions, purpose of this part.

727.2 Applicability and content of this part.

727.3 Definitions, use of terms.

727.4 Applicability of other parts in this subchapter.

Subpart B—Initial Review of Pending and Denied Claims

727.101 Who is entitled to review.

727.102 “Pending” and “denied” claim defined.

727.103 Duplicate claims.

727.104 Review by the Social Security Administration.

727.105 Action by the Office, Social Security approval.

727.106 Action by the Office, insufficient evidence for Social Security approval.

727.107 Action by the Office, Social Security referral without prior review.

727.108 Action by the Office, Department of Labor pending or denied claim.

727.109 Hearings and appeals, parties.

Subpart C—Criteria for Determining Eligibility for Benefits

727.200 Basis for criteria.

727.201 Persons entitled to benefits, dependents.

727.202 Definition of pneumoconiosis.

727.203 Interim presumption.

727.204 Presumption of entitlement applicable to certain death claims.

727.205 Effect of current coal mine employment or coal mine employment at the time of death.

727.206 Quality standards applicable to evidence.